

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Abbott Ambulance of Illinois and Professional EMTs & Paramedics (PEP). Case 14–CA–28826

February 28, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND KIRSANOW

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on November 24, 2006, the General Counsel issued the complaint on December 8, 2006, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 14–RC–12491. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(b); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On January 4, 2007, the General Counsel filed a Motion for Summary Judgment and a brief in support of the Motion. On January 9, 2007, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of the Board’s disposition of a determinative challenged ballot in the representation proceeding.¹

The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that

¹ The Board’s Decision and Direction adopting the Hearing Officer’s findings and recommendations is reported at 347 NLRB No. 82 (2006).

In addition to denying that the certification was proper, the Respondent alleges, as an affirmative defense, that even if the allegations of the complaint are true, the charge was prematurely filed because no alleged unfair labor practice had occurred on or before November 24, 2006, as the Respondent did not refuse to bargain until it sent its December 4, 2006 letter. This argument is irrelevant because the Respondent has admitted the operative complaint allegations that the Union requested bargaining on November 1, 2006, and that the Respondent has refused to bargain with the Union since December 4, 2006.

would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.² See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois not-for-profit corporation, with its principal office and place of business in Belleville, Illinois, has been engaged in the business of providing patient transportation services for various municipalities in the State of Illinois.

During the 12-month period ending November 30, 2006, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 for the Illinois municipalities of Fairview Heights, Caseyville, Belleville, and Madison, each of which municipalities are directly engaged in interstate commerce.

During the 12-month period ending November 30, 2006, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held April 15, 2004, the Union was certified on August 22, 2006, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

² Chairman Battista dissented in the underlying representation case. Contrary to his colleagues in the majority, he would not apply the test in *Red Arrow Freight Lines*, 278 NLRB 965 (1986), to determine the voting eligibility of individuals who were absent from their unit positions for medical reasons. Rather, consistent with the Board’s eligibility standard for laid-off employees, he would assess whether the employee, as of the date of the election, had a reasonable expectancy of returning to the unit. Applying that test, he would find that the employee at issue was not eligible to vote in the election. While he remains of that view, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). In light of this, and for institutional reasons, he agrees with the decision to grant the General Counsel’s Motion for Summary Judgment.

³ Therefore, we deny the Respondent’s request that the complaint be dismissed in its entirety.

All full-time and regular part-time EMT's, Paramedics, customer representatives, and couriers employed at the Employer's Belleville, Illinois facility, EXCLUDING all dispatchers, mechanics, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated November 1, 2006, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. By letter dated December 4, 2006, the Respondent refused to bargain collectively with the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since on or about December 4, 2006, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Abbott Ambulance of Illinois, Belleville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Professional EMTs & Paramedics (PEP), as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the agreement in a signed agreement:

All full-time and regular part-time EMT's, Paramedics, customer representatives, and couriers employed at the Employer's Belleville, Illinois facility, EXCLUDING all dispatchers, mechanics, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Belleville, Illinois, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 4, 2006.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 2007

Robert J. Battista,

Chairman

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Wilma B. Liebman, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain with Professional EMTS & Paramedics (PEP), as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time EMT's, Paramedics, customer representatives, and couriers employed at our Belleville, Illinois facility, EXCLUDING all dispatchers, mechanics, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

ABBOTT AMBULANCE OF ILLINOIS